

## **REMARKS**

### **Amendments to and Status of the Claims**

In this paper, claims 13, 34, 35, 37 and 38 have been amended. Support for the amendments can be found throughout the specification (including the claims) as originally filed. Claim 39 is new. Support for the amendments can be found throughout the application as filed, e.g., at original claim 15. No new matter has been added.

Claims 1-12, 14, 15, 24-33, and 36 have been cancelled without prejudice or disclaimer. Upon entry of this amendment, claims 13, 16-23, 34, 35, and 37-39 will be pending in the application.

The amendment and/or cancellation of claims is without prejudice or disclaimer of the subject matter thereof and was done solely to expedite prosecution of the present application. Applicants reserve the right to pursue the original subject matter of this application in a later-filed application claiming benefit of the instant application, including without prejudice to any determination of equivalents of the claimed subject matter.

Applicants note with appreciation the indication that claims 15, 22 and 33 would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims. Reconsideration of the remaining claims is requested for at least the reasons discussed herein.

### **Rejoinder of Claims**

In the Office Action, claims 16-21 and 35-38 were indicated as withdrawn from consideration (on the “Office Action Summary” page). Those claims are accordingly listed as “Withdrawn” or “Withdrawn – Currently amended” in the claim listing herein.

However, Applicants note that claims 35, 37 and 38 are method claims that depend from or otherwise include all the limitations of an allowable claim (claim 13 being allowable as discussed hereinbelow). Applicants therefore request rejoinder of claims 35, 37 and 38 pursuant to the practice described in MPEP 821.04.

Applicants note that the Office Action indicated that claim 38 has been rejoined (Office Action at page 3) and that claim 38 was indicated to be rejected under 35 U.S.C.

§103(a) (Office Action at page 12); rejoinder of this claim may not be necessary if this claim has already been rejoined, but rejoinder is requested if required.

In addition, Applicants point out that claims 16-21 all depend (directly or indirectly) from allowable claim 13, and each of claims 16-21 reads on the elected species (the compound of Example 205). Applicants respectfully contend that each of claims 16-21 relate to the same single inventive concept as claim 13 within the meaning of PCT Rule 13.1 and 37 CFR 1.475 and 1.499. Applicants therefore request rejoinder of claims 16-21.

Rejections under 35 U.S.C. § 112, first paragraph (written description)

In the Office Action, claims 2, 3, 4, 5, 14, 34, and 36 were rejected under 35 U.S.C. §112, first paragraph, as allegedly lacking written description. This rejection is traversed.

Without agreeing with the rejection, Applicants note that claims 2-5, 14 and 36 have been cancelled, so the rejection is moot as to those claims. Claim 34 as pending does not recite the language to which the Office Action refers. Thus, any reference in the Office Action to such language is regarded as moot, and the rejection does not apply to the pending claims.

Reconsideration and withdrawal of the rejections is proper and such action is requested.

Rejections under 35 U.S.C. § 112, second paragraph / 35 U.S.C. § 101

In the Office Action, claim 36 was rejected under 35 U.S.C. §112, second paragraph / 35 U.S.C. §101, as allegedly being indefinite and/or not falling within any of the defined statutory classes of patentable subject matter. This rejection is traversed.

Without agreeing with the rejection, Applicants note that claim 36 has been cancelled without prejudice or disclaimer. The rejection of this claim is therefore moot.

Reconsideration and withdrawal of the rejection is proper and such action is requested.

Rejections under 35 U.S.C. § 103(a)

In the Office Action, claims 1-6, 8, 9, 13, 14, 34, 36 and 38 were rejected under 35 U.S.C. §103(a) as allegedly being unpatentable over WO2002/053547 (“the ‘547 Publication”). This rejection is traversed.

Without agreeing with the rejection, Applicants note that claims 1-6, 8, 9 and 36 have been cancelled without prejudice or disclaimer. The rejection of these claims is therefore moot.

As noted above, the Examiner has indicated that the subject matter of claim 15 is allowable. Without agreeing with the rejection of original claim 13, Applicants note that claim 13, as now pending, includes all the limitations of original claim 15. Applicants therefore submit that claim 13 is allowable. Claims 14, 34, and 38, which depend from claim 13, are therefore also allowable.

Upon rejoinder, claims 16-21, 35 and 37, which depend (directly or indirectly) from claim 13, are also allowable.

Finally, new claim 39, which depends from claim 22 (which the Office Action indicated was free of the art of record), is also allowable for at least the reasons discussed above.

Applicants therefore submit that that the ‘547 Publication does not and cannot render the present claims unpatentable.

Reconsideration and withdrawal of the rejection is proper and such action is requested.

CONCLUSION

For at least the foregoing reasons, Applicants believe the pending application is in condition for allowance. Early and favorable action is earnestly requested. If a telephone conference with Applicants’ representative would be helpful in expediting prosecution of the application, the Examiner is invited to call the undersigned at the telephone number indicated below.

Applicants conditionally petition for any extension of time necessary for consideration of this response. The Director is hereby authorized to charge any deficiency in the fees filed, asserted to be filed or which should have been filed herewith

Application No. 10/534,081  
Response dated January 5, 2010  
Reply to Office Action of October 5, 2009

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Docket No.: 66530(46590)

(or with any paper hereafter filed in this application by this firm) to our Deposit Account No. 04-1105, under Order No. 66530(46590).

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Respectfully submitted,

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